

Application No.: 09/938,035  
Amendment Dated: September 3, 2003  
Reply to Office Action of: June 3, 2003

### **REMARKS**

The specification has been amended to correct a typographical error by correcting the date of deposit from "August 17, 2000" to --August 16, 2000-- and to insert a period at the end of the paragraph.

With a view towards furthering prosecution, claims 3, 8-11, 13 and 15 have been amended to remove their dependency from withdrawn claim 2.

It is submitted that no new matter has been introduced by the foregoing amendments. Approval and entry of the amendments is respectfully solicited.

### **Objection to the Specification**

The Examiner objected to the specification under 35 U.S.C. § 112, first paragraph. (Paper No. 14 at 2). In making the objection, the Examiner asserted that the specification fails to provide "complete evidence of the deposit of the biological material [recited in the claims]." (*Id.*).

In response, the following statements are provided upon information and belief.

The following strains were deposited under the terms of the Budapest Treaty at the Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (DSM), Mascheroder Weg 1b, D-38124 Braunschweig, Germany, on August 16, 2000 and assigned the following accession numbers:

*Alicyclobacillus* sp. : DSM No. 13652

*Alicyclobacillus* sp. : DSM No. 13653

*Alicyclobacillus* sp. NA-20 : DSM No. 13649

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*Alicyclobacillus* sp. NA-21 : DSM No. 13650

*Alicyclobacillus* sp. FJ-21 : DSM No. 13651.

Confirmation of these deposits is attached hereto as Exhibit 1.

All restrictions imposed by the depositor on the availability to the public of the deposited material mentioned will be irrevocably removed upon the granting of a patent.

The Examiner will note that a description of the deposited material, the accession numbers for the deposits, the date of the deposits and the address of the depository, as required by 37 CFR § 1.809(d), are disclosed in the specification at, for example, page 12, line 19 to page 13, line 8.

The statements and information set forth above render the objection moot. Accordingly, withdrawal of the objection is respectfully requested.

#### **§ 112, First Paragraph Enablement Rejection**

Claims 1, 3-16 and 18 were rejected under 35 USC § 112, first paragraph.

(Paper No. 14 at 5). In making the rejection, the Examiner asserted the following:

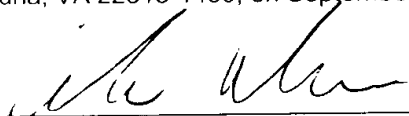
The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which it is most nearly connected, to make and/or use the invention with respect to the microorganism(s) as noted above [in the objection to the specification]... Upon receipt of a **statement of availability**, the above rejections will be withdrawn.

With a view towards furthering prosecution, a statement of availability regarding the deposited strains has been made as set forth above. Accordingly, it is respectfully submitted that the rejection is rendered moot and should be withdrawn.

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For the reasons set forth above, entry of the amendments, withdrawal of the objection and rejection, and allowance of the claims is respectfully requested. If the Examiner has any questions regarding this paper, please contact the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 3, 2003.

  
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Respectfully submitted,

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